UNITED NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 709

Case No. 771: NABHAN

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 10 August 1993, Nimer Ahmad Mahmud Nabhan, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 8 December 1993, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal, inter alia:

"[To call certain persons as witnesses and to]

Reinstate me with the Agency in light of the circumstances which prevailed and the recommendation of the Joint Appeals Board."

Whereas the Respondent filed his answer on 17 May 1994;

Whereas the Applicant filed written observations on 20 January 1995;

Whereas, on 24 May 1995, the Applicant submitted an additional statement;

Whereas, on 20 June 1995, the Applicant submitted additional documents and on 4 July 1995, the Respondent provided his comments thereon;

Whereas, on 18 July 1995, the Tribunal put questions to the Respondent to which he provided answers on the same day;

Whereas, on 18 July 1995, the Applicant submitted an additional statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 1 May 1970, as Assistant Distribution Team Leader, Grade 2. With effect from 1 February 1974, he was appointed Distribution Team Leader, Grade 6, and was subsequently transferred to the post of Area Sanitation Officer, Grade 6. With effect from 1 January 1981, the Applicant was appointed to the post of Camp Services Officer, Kalandia Camp, Grade 7. The Applicant's services were terminated for misconduct, with effect from 1 January 1992.

In a memorandum dated 4 June 1991, the Area Officer, Jerusalem, informed the Director of UNRWA Operations, West Bank, that "some uncomfortable pieces of information" regarding the Applicant had come to his office. He added that "talk continues on his exploitation of his job for his personal benefit," mentioning the fraudulent use of a ration card and abuses related to his supervision of the camp sewage system. He suggested that the Applicant be transferred, to avoid "possible friction with [the] camp community."

According to the record, on 27 July 1991, a group of masked youths entered the Applicant's office, destroyed some furniture, and demanded his resignation. In a leaflet dated 15 August 1991, the Applicant was accused of eighteen counts of misconduct, and UNRWA was "given two weeks as of the date of this leaflet to deal with the subject of the CSO [Camp Services Officer]."

On 17 August 1991, the Director of UNRWA Operations, West Bank, appointed a Board of Inquiry, composed of the Field Supply and Transport Officer, the Legal Officer (General Assistance), the Associate Administration Officer and the Administrative Assistant, Legal, to investigate the allegations made against the Applicant. In a memorandum dated 20 August 1991, the Director of UNRWA Operations, West Bank, informed the Applicant that allegations of misconduct had been made against him and that he was suspended from duty with pay, with effect from 22 August 1991, pending the outcome of the investigation.

In another leaflet dated 21 August 1991, the attack on the Kalandia Camp Services Office was condemned. An apology was issued to UNRWA officials in the camp, with a "pledge to the camp residents that we will fight this vile group who is trying to disunite our ranks."

A letter to the "General Director of UNRWA", dated 12 September 1991, from "Inhabitants and residents of Qualandia Camp", stated that the charges against the Applicant were "several worthless untrue charges and false accusations," and defended him as "an example of faithfulness, loyalty, dignity and honour." The letter suggested that following an unsuccessful attempt by the Director of UNRWA Offices, Ramallah, to transfer the Applicant from the Kalandia camp, the Director "tried afterwards to invent justifications against [the Applicant]" and hired "several depraved and corrupted young men and who were paid in order to deform the reputation of [the Applicant]".

The Board of Inquiry interviewed nineteen witnesses, examined relevant documents, and undertook physical inspections of sites in the camp. Its report, adopted in November 1991, found that four of the accusations against the Applicant were well-founded: (i) he had exploited sanitation labourers subordinate to him to work at his private home while they were on duty, (ii) he had been involved in the fraudulent use of a ration card registered in the name of a deceased refugee, (iii) he had counterfeited, for personal gain, the

number of trips made by vacuum tankers to clean sewage tanks, (iv) he had registered families outside the camp allowing them to benefit from rations to which they were not entitled.

The Board noted that "there was much rancor and animosity among the principal antagonists and that perhaps the inquiry was being used as a forum to settle a personal vendetta." It considered the Applicant s defence that there was a "conspiracy to defame him". Although the Board noted "it is certain that the [Applicant's] allegations contain an element of truth", it concluded that the weight of the evidence supported a finding that the Applicant "committed the mentioned improprieties while in the course of his work."

In a letter dated 6 January 1992, the Director of UNRWA Operations, West Bank, notified the Applicant that the Administration had decided, based on the Board of Inquiry's findings, to terminate his services for misconduct, pursuant to Area Staff Regulation 10.2, with effect from 1 January 1992. On 11 January 1992, the Applicant requested administrative review of this decision, maintaining that he was a victim of prejudice. In a letter dated 15 January 1992, the Director of UNRWA Affairs, West Bank, confirmed the contested decision. On 21 January 1992, the Applicant lodged an appeal with the Area Staff Joint Appeals Board (JAB).

On 10 May 1993 the JAB transmitted its report to the Administration. Its conclusion and recommendation read as follows:

"...

1. The investigation and the consequent decision of the Agency were motivated by extraneous factors, i.e. an accusing leaflet prepared and published by outsiders.

2. The testimonies made by various witnesses to the Inquiry Board, were, in the words of the Inquiry Board, tainted by such rancor and animosity among the antagonists and the system was misused to settle a personal vendetta. The testimonies led, ultimately, to the Agency's decision to terminate the services of the Appellant.

V. RECOMMENDATION

In view of the foregoing the Board by majority of its votes (dissenting opinion of ..., Board member attached), makes its recommendation that the Administration's decision of 6 January 1992 to terminate the Appellant's service for misconduct under staff rule 110.1 be reviewed with a view to make the termination in the interest of the Agency under staff rule 109.1."

In a separate letter, dated 19 April 1993, the dissenting member of the JAB advised the Chairman of his belief "that the accusations launched against [the Applicant] were motivated by extraneous factors and were not established..." He therefore recommended reinstatement of the Applicant, noting "I have no objection to serving him with a letter of censure in addition to any suspension from work for a limited period of time but not to terminate his services under any staff rule."

In a letter dated 8 June 1993, the Officer-in-Charge, Headquarters, transmitted a copy of the JAB report to the Applicant and informed him as follows:

"... As you can see, a majority of the Board's members has recommended that the decision to terminate your services for misconduct under area staff rule 110.1 (i.e regulation 10.2), be changed to termination in the interest of the Agency under area staff rule 109.1 (i.e. regulation 9.1). I believe that the Agency's decision was based on adequate evidence that the Appellant had defrauded the Agency and abused his position for personal benefit. Nonetheless, in the interest of finality, I accept this recommendation and accordingly confirm that the termination of your services with effect from 1 January 1992 will stand, but that you will now be eligible to receive a termination indemnity under area staff rule 109.9. The Field Administration in Jerusalem will communicate with you in this respect.

I have noted the Board's conclusions that 'the investigation and the consequent decision of the Agency were motivated by extraneous factors, i.e. an accusing leaflet prepared and published by outsiders', and that the testimonies which led ultimately to the Agency's decision were 'tainted by such rancor and animosity among the

antagonists'. I do not accept these observations to the extent that they reflect on the Agency's action, and my decision is not an admission that these comments are applicable in any way to the Administration."

On 10 August 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The entire proceeding against the Applicant began in response to a bogus leaflet, which was clearly a personal attack against the Applicant and part of an ongoing campaign to defame him and deprive him of his position with UNRWA.

2. The whole investigation and decisions surrounding it were tainted by prejudice and improper motivation. The proceedings of the Board of Inquiry were full of animosity, and lacking in neutrality or objectivity.

Whereas the Respondent's principal contentions are:

1. The decision to terminate the Applicant's appointment in the interest of the Agency was a discretionary decision, which was justified by the Board of Inquiry's report.

2. There is no evidence to support the Applicant's allegation that the Respondent's decision was motivated by bias or prejudice.

The Tribunal, having deliberated from 7 to 28 July 1995, now pronounces the following judgement:

I. This long-standing employee of UNRWA appeals against the decision to terminate his services in the interest of the Agency under area staff rule 109.1 (i.e. regulation 9.1) with effect from 1 January 1992.

Prior to the difficulties which gave rise to this case, the Applicant seems to have had a good work-record, with a meritorious increment and a letter from the Director of UNRWA Operations, West Bank, commending his service.

The Applicant lays stress on what he describes as the malignant animosity of the persons who made the allegations against him.

II. The Applicant bases his case on the following: (i) that the allegations were made against him out of spite and because of factors which had nothing to do with the proper running of the camp or the way in which he carried out his work, and that there was a conspiracy against him; (ii) that the Board of Inquiry erred in factual matters and found against him despite a lack of evidence; (iii) that the Board of Inquiry's conclusion was tainted by an atmosphere of prejudice and improper motivation.

III. It is obvious that the Kalandia camp was in a condition of some turmoil during 1991. While the accusations against the Applicant culminated in August of that year in the first leaflet issued against him, it would appear that suggestions about the Applicant's probity had been made at an earlier stage. These earlier suggestions resulted in a memorandum from the Area Officer for Jerusalem, to the Director of UNRWA Operations, West Bank, saying that to prevent escalation in the matter, the Applicant might be transferred to the post of Assistant House/Master at RMTC (similar grade) thereby avoiding possible friction in the camp community.

IV. Subsequent to the statement against the Applicant, and, indeed, a counter-statement in another leaflet defending the Applicant, a Board of Inquiry was set up to investigate the allegations.

The Board found against the Applicant in four out of nine charges:

(i) That the UNRWA Sanitation Labourers had to work at the Applicant's house when they were on duty;

(ii) That the Applicant was in possession of a ration card registered in the name of a dead person in order to receive the rations;

(iii) That the Applicant counterfeited the number of trips made by the vacuum tanker in order to keep for himself the money paid;

(iv) That families who resided outside the camp were registered by the Applicant in the camp register, entitling them to rations.

V. Once the allegations were made, the Administration took the proper course in setting up the Board of Inquiry. While the Applicant may well be correct in his assertion that the allegations were made out of spite and that there was a conspiracy against him, these factors, of themselves, do not necessarily mean that the allegations are false. However, his assertion gives rise to the necessity to investigate the allegations in that context.

VI. There is nothing in the Board of Inquiry's thorough report to show that it did not investigate the matter fully and fairly and in the knowledge of the background against which the allegations were made. The fact that, of nine charges, they found against the Applicant in only four, is suggestive of the fair and unbiased way in which they approached their task.

The Joint Appeals Board (JAB) agreed with the Board of Inquiry's conclusion that the Applicant was guilty of improprieties. The JAB found that there was an extraneous factor in that the leaflet of accusation was compiled by outsiders. The Board also found that the testimony of witnesses to the Board of Inquiry was tainted by rancour and animosity and that the system was misused to settle a personal vendetta. Because of these factors, the JAB, by a

majority, recommended that the decision to terminate the Applicant's services for misconduct under staff rule 110.1 be reviewed to make it a termination in the interest of the Agency under staff rule 109.1. The dissenting member recommended re-instatement, stating that he had "no objection" to "serving [the Applicant] with a letter of censure" and imposing a limited period of suspension.

VII. The Tribunal agrees with the findings of the Board of Inquiry and of the JAB, and assesses this case on the basis that the Applicant was guilty of the limited number of charges of which the Board of Inquiry found him guilty.

VIII. In considering the penalty that has been imposed on the Applicant, the Tribunal takes cognizance both of the seriousness of the charges and the character and record of the Applicant. While the Tribunal does not seek to minimise the gravity of the offences, it notes that the Applicant had served UNRWA well, over a long period of time. He had been given two commendations to which reference has already been made. His record, with the exception of these present events, was good.

IX. Although the Tribunal is fully conscious of the discretionary power of the Commissioner General in disciplinary matters, the Tribunal considers that the mitigating factors have not been afforded sufficient consideration. In these circumstances, namely the long service and good record of the Applicant prior to the events in question, the Tribunal is of the view that termination was perhaps too severe a penalty.

The Tribunal therefore orders:

(i) That the Applicant be given priority consideration for appointment to a suitable post, and

(ii) That the Applicant be compensated in an amount equal to one year of his net base salary, at the rate in effect on the date of his separation from service.

X. The Tribunal makes no further order and rejects all of the other pleas of the Applicant.

(Signatures)

Samar SEN
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 28 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary